



**SENATE SUBSTITUTE AMENDMENT 1,
TO 1995 ASSEMBLY BILL 244**

November 15, 1995 – Offered by Senators MOORE, RISSER, MOEN, ADELMAN and BURKE.

1 **AN ACT** *to repeal* 55.06 (9) (d) and (e) and 55.06 (13); *to amend* 20.435 (2) (gk),
2 55.001, 55.06 (6) and 55.06 (9) (a) to (c); and *to create* 55.01 (5m) and 55.045
3 of the statutes; **relating to:** funding and program responsibilities and
4 limitations for protective placements.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 20.435 (2) (gk) of the statutes, as affected by 1995 Wisconsin Act 27,
6 is amended to read:

7 20.435 (2) (gk) *Institutional operations and charges.* The amounts in the
8 schedule for care provided by the centers for the developmentally disabled to
9 reimburse the cost of providing the services and to remit any credit balances to
10 county departments that occur on and after July 1, 1978, in accordance with s. 51.437
11 (4rm) (c); for care provided by the mental health institutes, to reimburse the cost of
12 providing the services and to remit any credit balances to county departments that
13 occur on and after January 1, 1979, in accordance with s. 51.42 (3) (as) 2; for
14 maintenance of state-owned housing at centers for the developmentally disabled

1 and mental health institutes; for repair or replacement of property damaged at the
2 mental health institutes or at centers for the developmentally disabled; and for
3 reimbursing the total cost of using, producing and providing services, products and
4 care. All moneys received as payments from medical assistance on and after August
5 1, 1978; as payments from all other sources including other payments under s. 46.10
6 and payments under s. 51.437 (4rm) (c) received on and after July 1, 1978; as medical
7 assistance payments, other payments under s. 46.10 and payments under s. 51.42
8 (3) (as) 2 received on and after January 1, 1979; as payments for the rental of
9 state-owned housing and other institutional facilities at centers for the
10 developmentally disabled and mental health institutes; for the sale of electricity,
11 steam or chilled water; as payments in restitution of property damaged at the mental
12 health institutes or at centers for the developmentally disabled; for the sale of
13 surplus property, including vehicles, at the mental health institutes or at centers for
14 the developmentally disabled; and for other services, products and care shall be
15 credited to this appropriation, except that any payment under s. 46.10 received for
16 the care or treatment of patients admitted under s. 51.10, 51.15 or 51.20 for which
17 the state is liable under s. 51.05 (3), ~~of patients admitted under s. 55.06 (9) (d) or (e)~~
18 ~~for which the state is liable under s. 55.05 (1)~~, of forensic patients committed under
19 ch. 971 or 975, admitted under ch. 975 or transferred under s. 51.35 (3) or of patients
20 transferred from a state prison under s. 51.37 (5), to Mendota mental health institute
21 or Winnebago mental health institute shall be treated as general purpose revenue
22 — earned, as defined under s. 20.001 (4).

23 **SECTION 2.** 55.001 of the statutes is amended to read:

24 **55.001 Declaration of policy.** The legislature recognizes that many citizens
25 of the state, because of the infirmities of aging, chronic mental illness, mental

1 retardation, other developmental disabilities or like incapacities incurred at any age,
2 are in need of protective services. These services should, to the maximum degree of
3 feasibility under programs, services and resources that the county board of
4 supervisors is reasonably able to provide within the limits of available state and
5 federal funds and of county funds appropriated to match state funds, allow the
6 individual the same rights as other citizens, and at the same time protect the
7 individual from exploitation, abuse and degrading treatment. This chapter is
8 designed to establish those services and assure their availability to all persons when
9 in need of them, and to place the least possible restriction on personal liberty and
10 exercise of constitutional rights consistent with due process and protection from
11 abuse, exploitation and neglect.

12 **SECTION 3.** 55.01 (5m) of the statutes is created to read:

13 **55.01 (5m)** "Residence" has the meaning given in s. 51.01 (14).

14 **SECTION 4.** 55.045 of the statutes is created to read:

15 **55.045 Funding; limitations. (1)** The appropriate county department in the
16 county of residence of persons who are protectively placed or who receive protective
17 services under this chapter shall, within the limits of available state and federal
18 funds and of county funds appropriated to match state funds, provide for the
19 reasonable program needs of those persons. Payment and collections for protective
20 placement or services provided in public facilities specified in s. 46.10 shall be
21 governed in accordance with s. 46.10. The appropriate county department shall be
22 charged for the cost of care and custody resulting from placement under this chapter.
23 The department may require that a person who is protectively placed or receives
24 protective services under this chapter provide reimbursement for services or care

1 and custody received based on the ability of the person to be protected to pay for such
2 costs.

3 **(2)** Reasonable expenses for establishing a protective placement and for
4 periodic reviews of the protective placement may be charged to the subject of the
5 protective placement. These expenses include:

6 (a) The petitioner's expenses related to proceedings to establish a protective
7 placement, including guardianship proceedings if applicable and the petitioner's
8 attorney fees, unless the petitioner is represented by the district attorney or
9 corporation counsel.

10 (b) Guardian ad litem fees.

11 (c) Fees of the subject's independent counsel, if any.

12 (d) Charges for the evaluations required under s. 55.06 (8).

13 (e) The expenses or charges of the appropriate county department making
14 recommendations for establishing the protective placement and for periodic reviews
15 of the protective placement, including the attorney fees of the county department or
16 agency, unless it is represented in the proceedings by the district attorney or
17 corporation counsel, and expenses for the evaluations required by s. 55.06 (8), for
18 providing the testimony of the protective services staff of the county department or
19 agency, for preparing reports for review of protective placement, for the
20 examinations and reports required under s. 880.33 (1) and (2) (b), for similar
21 examinations and reports in protective placement reviews and for obtaining records
22 relevant to the protective placement.

23 **(3)** The court shall, upon a request and upon its finding that expenses described
24 in sub. (2) are reasonable, order reimbursement which may be available from federal,
25 state or other sources. If reimbursement is not available, the court may order

1 payment from the subject's estate, including income, according to the subject's ability
2 to pay. The appropriate county department making recommendation for placement
3 shall seek appropriate reimbursement for such expenses. To the extent that the
4 subject's estate, including income, and available reimbursement are insufficient,
5 these expenses shall be paid by the county department, within the limits of available
6 state and federal funds and of county funds appropriated to match state funds,
7 unless the court directs otherwise.

8 **SECTION 5.** 55.06 (6) of the statutes is amended to read:

9 55.06 (6) Section 880.33 (2) applies to all hearings under this chapter except
10 for transfers of placement under sub. (9) (b), and (c) and (e). A person to be protected
11 shall have a guardian ad litem who is an attorney appointed in accordance with s.
12 757.48 (1) present at all hearings under this chapter if the person does not have full
13 legal counsel. The court may, however, excuse a personal appearance by a guardian
14 ad litem based on information contained in a written report by the guardian ad litem
15 to the court. If the person is indigent, the county of legal settlement shall be liable
16 for guardian ad litem fees. The subject individual, attorney or guardian ad litem
17 shall have the right to present and cross-examine witnesses, including any person
18 making an evaluation or review under sub. (8) (c).

19 **SECTION 6.** 55.06 (9) (a) to (c) of the statutes are amended to read:

20 55.06 (9) (a) The court may order protective services under s. 55.05 (2) (d) as
21 an alternative to placement. When ordering placement, the court, on the basis of the
22 evaluation and other relevant evidence, shall order ~~placement through the~~
23 ~~appropriate board designated under s. 55.02 or an agency designated by it~~ county
24 department in the individual's county of residence to protectively place the
25 individual. Placement by the appropriate county department shall be made in the

1 least restrictive environment consistent with the subject's needs of the person to be
2 placed. The county department shall report to the court as to the initial plan of care
3 or services for the subject. Factors to be considered by the county department in
4 making protective placement shall include the needs of the person to be protected for
5 health, social or rehabilitative services ~~and~~; the level of supervision needed; the
6 reasonableness of the placement given the cost and the actual benefits in the level
7 of functioning to be realized by the individual; the limits of available state and
8 federal funds and of county funds appropriated to match state funds; and the
9 reasonableness of the placement given the number or projected number of
10 individuals who will need protective placement and given the limited funds
11 available. Placement under this section does not replace commitment of a person in
12 need of acute psychiatric treatment under s. 51.20 or 51.45 (13).

13 (am) The court shall designate the maximum level of restrictiveness of the
14 facility or services, if any, that may be used for the individual. The county
15 department shall have ongoing responsibility to review the subject's needs and
16 transfer the subject to the least restrictive environment consistent with his or her
17 needs. Placement may be made to such facilities as nursing homes, public medical
18 institutions, centers for the developmentally disabled under the requirements of s.
19 51.06 (3), foster care services and other home placements, or to other appropriate
20 facilities but may not be made to units for the acutely mentally ill. ~~The prohibition~~
21 ~~of placements in units for the acutely mentally ill does not prevent placement by a~~
22 ~~court for short-term diagnostic procedures under par. (d).~~ Placement in a locked unit
23 shall require a specific finding of the court as to the need for such action. A county
24 department or placement facility may transfer a patient from a locked unit to a less
25 restrictive environment without court approval.

1 (b) Transfer may be made between placement units or from a placement unit
2 to a medical facility other than those in the circumstance specified in ~~pars.~~ par. (c)
3 ~~to (e)~~ by a county department, guardian or placement facility without approval by a
4 court. When transfer is made by a placement facility, 24 hours' prior written notice
5 of the transfer shall be provided to the guardian and the county department, when
6 feasible. If it is not feasible to notify the guardian or the county department in
7 advance, the facility shall provide written notice ~~shall be provided~~ immediately upon
8 transfer, ~~and notice shall also be provided to the court and to the board designated~~
9 ~~under s. 55.02 or an agency designated by it within a reasonable time, not to exceed~~
10 ~~48 hours from the time of the transfer.~~ Upon petition to a court by a guardian, ward,
11 or attorney, county department or other interested person specifying objections to a
12 transfer, the court shall order a hearing, within 96 hours after filing of the petition,
13 to determine whether there is probable cause to believe that the transfer is consistent
14 with the requirements specified in ~~par.~~ pars. (a) and (am) and is necessary for the best
15 interests of the ward. The court shall notify the ward, appropriate county
16 department, guardian and petitioner of the time and place of the hearing, and a
17 guardian ad litem shall be appointed to represent the ward. ~~If the person is indigent,~~
18 ~~the county of legal settlement shall be liable for guardian~~ Guardian ad litem fees
19 shall be paid under s. 55.045. The petitioner, ward or attorney, county department
20 and guardian shall have the right to attend, and to present and cross-examine
21 witnesses.

22 (c) Transfer to a more restrictive placement, including a locked unit, may be
23 made with notice to the guardian, ~~the court and appropriate board designated under~~
24 ~~s. 55.02 or an agency designated by it~~ county department in the manner prescribed
25 in par. (b). Upon petition by a guardian, ward or attorney, county department or

1 other interested person specifying objections to the transfer, the court shall order a
2 hearing as provided in par. (b).

3 **SECTION 7.** 55.06 (9) (d) and (e) of the statutes are repealed.

4 **SECTION 8.** 55.06 (13) of the statutes is repealed.

5 **SECTION 9. Initial applicability.**

6 (1) This act first applies to a cause of action that arises on the effective date
7 of this subsection.

8 (END)